

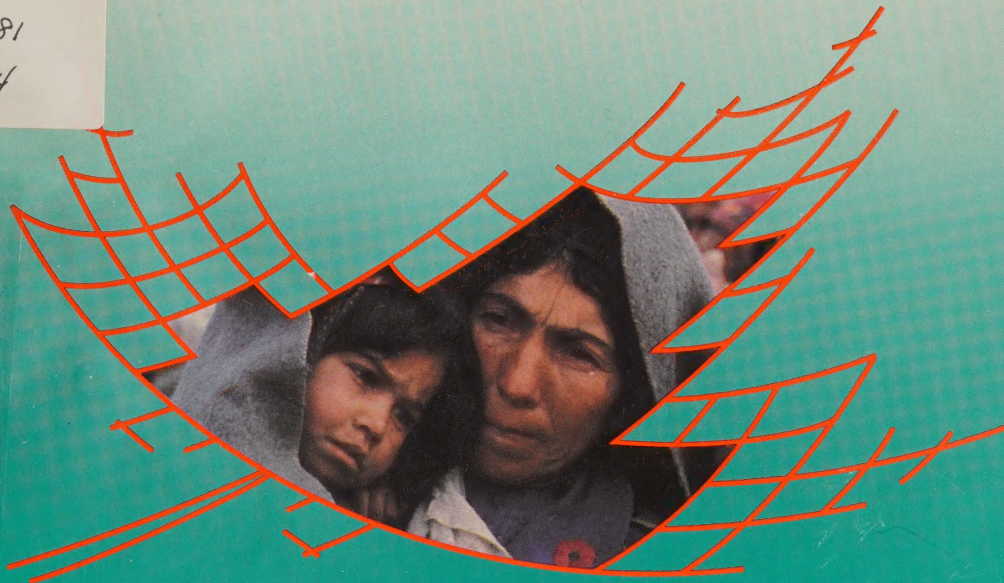
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# BACKLOG PROCESS

## HOW THE SYSTEM WORKS

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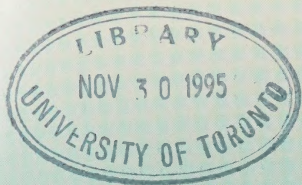
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Immigration and  
Refugee Board

La Commission de l'immigration  
et du statut de réfugié

Canada



The Nansen Medal



## INTRODUCTION



*Presented to the*

**LIBRARY of the**

**UNIVERSITY OF TORONTO**

*by*

**PROFESSOR  
FREDA HAWKINS**

Canada has a long and honourable tradition when it comes to accepting refugees from all over the world. Since the Second World War, Canada has provided a new homeland for more than half a million men, women and children fleeing from fear and persecution in their own homelands.

In 1986, the United Nations High Commissioner for Refugees presented the Nansen Medal to the people of Canada in recognition of this country's outstanding efforts on behalf of refugees. This was the first time in the more than 40-year history of the Medal that it had ever been awarded to an entire nation.

Over the past few years, the number of claimants seeking refugee status in Canada grew astronomically. The refugee determination system in place at that time simply could not cope with the increasing number of claimants. As a

result, the Government of Canada established a new system through the creation of the Immigration and Refugee Board.

Fairness, compassion and openness lie at the heart of the new refugee determination system. The commitment of the men and women who are members of the Immigration and Refugee Board remains true to the traditions and values that Canadians have long espoused when it comes to our compassion towards refugees.

In dealing with claimants who have been waiting months and even years to have their claims for refugee status determined, the Immigration and Refugee Board will treat each claim with sensitivity and fairness.

*Gordon Fairweather*

Gordon Fairweather  
Chairman  
Immigration and Refugee Board

## THE ROLE OF THE BOARD



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The function of the Immigration and Refugee Board (the Board) is to act in the spirit of Canada's tradition of providing safe haven by adjudicating fairly and quickly all claims for refugee status in this country. The challenge is to enable Canada to offer needed protection to genuine refugees consistent with our international commitments.

Adjudication of refugee claims is made in accordance with the Canadian Charter of Rights and Freedoms, the United Nations Convention relating to the Status of Refugees and Canada's humanitarian traditions.

The Immigration and Refugee Board is an administrative tribunal. The Board ensures that claimants understand the process and are full participants in it. Simultaneous translation services are provided at all hearings so proceedings can be interpreted in the language of the claimant.

The Board is independent of the Department of Employment and Immigration and the political process. Instead of reporting to a Minister, the Board reports to the Parliament of Canada through the Minister. A member of the Board and an independent adjudicator, not the department, determine whether or not the claim to refugee status has a credible basis.

A special Division of the Board, the Backlog Sub-Division, has been established to deal with refugee claimants who made their claims prior to December 31, 1988. A minimum of 50 "two-person" panels will be established to hold hearings across Canada for claimants in the backlog in order to determine their status as quickly as possible.

## WHY THERE IS A BACKLOG

For a variety of reasons, the number of people making claims for refugee status in Canada rose dramatically in the 1980s. At the beginning of the decade, there were about 1,600 claims made each year. However, by 1987 some 27,000 claims were initiated and in the last half of 1988 alone, it is estimated that over 35,000 claims for refugee status were made.

The old process for determining refugee claims was not designed to handle such a large number of claimants. Because the old process was very time-consuming, the increasing number of claims resulted in an ever-growing backlog of people who had entered Canada, made a claim for refugee status and then had to wait a long period of time for their case to receive attention.



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## Clearing the Backlog Will Take Time

The Minister of Employment and Immigration has estimated that it will take about two years before all the people awaiting determination of their refugee claims at the end of 1988 have been heard. While it is the desire of the Board that these claimants be dealt with as quickly as possible, our first responsibility is to ensure that all claimants in the backlog are given a fair hearing and that all the facts relevant to a determination of their claims are brought forward for consideration.

The process of reviewing the backlog claims has already begun across Canada. The Board will begin verbal hearings in the major centres in the summer of 1989. This delay is because of the need to establish new Canada Immigration Centres which will be dealing exclusively with backlog refugee claims. There will be four such centres, two in Toronto, one in Montreal and one in Vancouver.

## WHO ARE CLAIMANTS IN THE BACKLOG

The claimants who will go through the backlog determination process are those who entered Canada before January 1, 1989 and either claimed refugee status or indicated their intention to do so. These people are in the backlog because the determination of their claims was not concluded before the new refugee determination system came into effect on January 1, 1989.

Claimants in the backlog can be divided into four groups based upon the length of time they have been in Canada and how far their claims had proceeded under the old refugee determination system:

People whose claims had proceeded to the 'examination under oath' stage under the old system; these are people whose claims for refugee status are the longest standing;

People who arrived in Canada between May 1986 and February 1987 from countries on the B-1 list. Claimants from these countries were automatically given Minister's permits allowing them to remain in Canada for an indefinite period of time;

People whose claims had begun to be processed under the old system but had not proceeded to the 'examination under oath' stage;

People whose claims had not been dealt with at all under the old system; these are the most recent of the backlog claimants.

The primary countries of origin of backlog claimants include Trinidad and Tobago, Sri Lanka, Iran, El Salvador, Portugal, Ghana, India, Nicaragua, Lebanon and Guatemala.





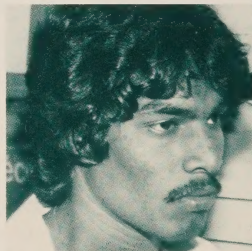
## HOW CANADA DETERMINES WHO IS A REFUGEE

The refugee determination process in Canada is the means through which people may seek to receive protection according to the 1951 United Nations Convention relating to the Status of Refugees.

Convention Refugees are people who, because of a well-founded fear of persecution due to their race, religion, nationality, membership in a particular social group or, political opinions, are unwilling or unable to return to their country of nationality or former habitual residence.

This is the definition that is applied to the facts of each claim in order to determine if there is a credible basis for the refugee claim. Backlog claimants must be able to present some trustwor-

thy evidence towards meeting the Convention definition; in most cases, they do not have to be full Convention refugees. However, factors such as age, linguistic ability, length of residence in Canada, occupation and relatives in Canada are not criteria included in the Convention definition.



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## THE BACKLOG PROCESS



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There are three separate stages to the process of deciding whether or not refugee claimants will be permitted to remain in Canada; these are the initial interview, the credible basis hearing and the humanitarian and compassionate review by the Minister of Employment and Immigration.

### **The Initial Interview**

This interview takes place between the refugee claimant and an official from Immigration Canada, to collect the basic facts from the claimant and assess whether or not the claimant should be permitted to remain in Canada for humanitarian and compassionate reasons. At this stage, the only grounds considered relate to family class criteria; that is, the claimant has close family in Canada who are either permanent residents or Canadian citizens.

In some cases, individuals may be granted permanent residence in Canada on these grounds without having to go through the credible basis hearing. However, Immigration Canada officials do not determine who does or does not have a credible basis for their refugee claims.

### **The Credible Basis Hearing**

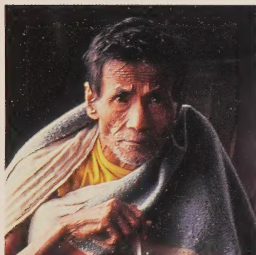
Following this initial interview, the claimant is referred to a credible basis hearing. This is a verbal hearing held before a member of the Board and an independent adjudicator. During this hearing, it is determined whether or not there is a credible basis for a refugee claim. If the decision is favourable, the claimant may apply for and receive landed immigrant status in Canada, after meeting statutory requirements. If the claim is found to have no credible basis, the claimant is referred to the third stage of the backlog process.

### **Humanitarian / Compassionate Review**

Here, Immigration Canada applies a broader range of humanitarian and compassionate grounds designed to ensure that persons who would face unduly harsh or inhumane treatment in their country of origin because of personal circumstances are not removed from Canada. Where such grounds are found, the claimant will be permitted to remain in Canada; if not, removal could take place. The Board does not deport people from Canada; that is a decision made by the Minister.



## HOW CREDIBLE BASIS IS DETERMINED



The credible basis hearing is the focus of the backlog refugee determination process. The credible basis hearing takes place before a panel consisting of an Immigration Canada adjudicator and a member of the Immigration and Refugee Board. This hearing is an adversarial process, with the claimant and the Minister's representative arguing the merits of the claim and the panel members deciding whether or not there is a credible basis for the refugee claim.

This hearing considers any evidence that would establish whether or not the claim has some credible basis. This 'credible basis' evidence includes the human rights record of the claimant's country of origin as well as the conditions that exist in that country at the time. Each case is treated individually and decisions are made solely on the basis of the definition of a Convention Refugee.

Only one member of the panel need decide in favour of the claimant in order for the claim to be determined to have a credible basis; both must be convinced that there is no credible basis for the claim to be disallowed.

At any point in this hearing, the Minister's representative, the Case Presenting Officer, may choose not to argue the facts of the claim. If this takes place, the claimant will also be referred back to Immigration Canada where he or she can apply for landing in Canada.

## OTHER FACTS ABOUT THE PROCESS



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### Removal Orders and Voluntary Departures

If the panel determines there is no credible basis for the refugee claim and if there are no humanitarian and compassionate grounds that apply to the claimant's particular circumstances, the claimant may be removed from Canada. If a deportation order is executed, the claimant will not be permitted to return to Canada, either as an immigrant or a visitor, without the consent of the Minister of Immigration.

If a claimant chooses to leave the country voluntarily at any point during the process prior to a removal order being issued, the claimant remains eligible for admission to Canada under general immigration rules and procedures. If a claimant applies outside of Canada to immigrate, experience in Canada will be taken into consideration by Immigration officials dealing with their requests.

### Right to Appeal

All claimants have the right to appeal, with leave, a negative decision on the credible basis for their claims to the Federal Court of Canada. However, the

Federal Court will only consider questions of law or 'capricious' findings of fact; the appeal does not reconsider the merits of the claim for refugee status.

### Priority of Claimants

Backlog claimants will be dealt with in the same order in which they made their claims. That is, those who made their claims first will be first to have them determined, beginning with those people whose claims had proceeded to the 'examination under oath' stage of the old refugee determination system. However, a special priority can be given to those claimants whose families face continuing danger of persecution in their country of origin. If these claimants are granted permanent residence in Canada, they will be in a position to sponsor their relatives' entry into Canada under family-class immigration criteria.

## ENSURING FAIRNESS IN THE PROCESS

### **Benefit of the Doubt**

During the refugee determination hearing, the claimant is given the benefit of the doubt in making a decision on the claim. It requires the unanimous decision of the panel to reject a claim, while the decision of a single panel member will result in a finding of credible basis and the processing towards permanent residence in Canada.

### **The Refugee Hearing Process**

The refugee determination hearing process is designed to operate as fairly as possible and protect the claimant's interest throughout. Every effort is made to ensure the claimant puts forward the facts of the case as fully as possible without restrictive technical or legal rules of evidence. The claimant is entitled to be represented by counsel and has the full protection of the Charter of Rights and Freedoms.

### **The IRB Members**

Each member of the Backlog Sub-Division of the Board receives thorough

training on determining refugee status which includes training on the Convention definition, the rights of claimants and the rules of the determination process.

### **International Monitoring**

The United Nations High Commission for Refugees (UNHCR) may observe any part of the refugee determination process. The UNHCR Representative in Canada has delegates in each of the Board's offices available to assist both the Board and refugee claimants.



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## USING THE BEST INFORMATION POSSIBLE



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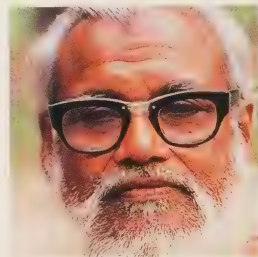
Central to the effective operation of the refugee determination process is the Board's Documentation Centre. This Centre provides the background information required for decision-making on claims for refugee status as well as serving as a public resource for refugee and immigration issues. As it develops, it will become the principal source in Canada for information on refugees, including profiles of conditions in countries which are producing refugees. This information is available to all participants in the determination process as well as to the public at large.

Currently, the Documentation Centre functions as a bibliographic source, knowing what information is available and where it can be found, rather than attempting to compile all information in a central location.

Because of its unique role, the Documentation Centre is striving to become a model of national and international cooperation in information sharing and in the maintenance of current and reliable information. The Centre will be linked to other computer data bases worldwide, including those at The

Hague, Bonn and at the Office of the UN High Commissioner for Refugees in Geneva. Links will also be developed between the Centre and non-governmental organizations such as Amnesty International in order to ensure that Canada always has the best possible information available.

At the credible basis hearing, the panel is allowed to take into account any evidence advanced during the hearing. Any information on the conditions in the claimant's country of origin must be introduced either by the claimant or the Case Presenting Officer.



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## COMPOSITION OF THE IMMIGRATION AND REFUGEE BOARD



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The Board is Canada's largest administrative tribunal with over 142 making up the Convention Refugee Determination Division, 50 in the Backlog Sub-Division and 21 in the Appeal Division. Members are appointed to cover all major centres across Canada as required by caseloads; the government can appoint additional members in order to meet increased demands on the system.

The Board is headed by a **Chairman** who is the chief executive officer of the Board. It is the Chairman's role to manage the Board's resources and ensure the Board achieves the goals for which it was established.

The backlog determination process is headed by an **Assistant Deputy Chairman (Backlog)**. His role is to ensure that backlog refugee claimants are dealt with efficiently and fairly and oversee the activities of members dealing with backlog cases. He is assisted by Board members who serve as co-ordinators in Toronto and Montreal.

**Members** participate in Backlog determination hearings. They render independent decisions on the credible basis for claims that come before them, based on the facts of the case and the application of the definition of a Convention Refugee to those facts.

An **Executive Director**, reporting to the Chairman, implements and manages policies, systems and administrative procedures essential to support the effective functioning of the Board.

# THE BACKLOG PROCESS

## INITIAL INTERVIEW

Family Class Humanitarian  
and Compassionate

– remains in Canada

No application of  
family class

– referred to credible  
basis hearing

## CREDIBLE BASIS HEARING

Established credible  
basis for claim

– can apply to CEIC

No credible basis

– can appeal with leave  
– referred to CEIC for  
humanitarian  
compassionate review

## HUMANITARIAN AND COMPASSIONATE REVIEW

Grounds established

– remains in Canada

No grounds established

– removed from Canada



## BACKLOG OFFICES

### National Headquarters

Ottawa, Ontario  
K1A 0K1

### Montreal

420 de la Gauchetière West  
Montreal, Quebec  
H2Z 1E1

### Vancouver

1176 West Georgia Street  
Vancouver, B.C.  
V6E 3H7

### Toronto

250 Davisville Avenue  
Toronto, Ontario  
M4S 1H2

### Mississauga

77 City Centre Drive  
Mississauga, Ontario  
L5B 1M5

This booklet explains, in general, the Refugee Claimants Backlog Process.

It is not, however, a legal document. For precise, legal information, please consult the Refugee Claimants Backlog Designated Class Regulations.

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